

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CHAD L.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2011040716

**DECISION**

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, in San Bernardino California on June 30 and November 28, 2011.

The Inland Regional Center (agency) was represented by Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs.

Claimant was represented by his mother.

Oral and documentary evidence was received and the matter was submitted on November 28, 2011.

**ISSUES**

1. Is claimant eligible for agency services under the diagnosis of autistic disorder?
2. Is claimant eligible for agency services under the diagnosis of having a condition similar to mental retardation that requires treatment similar to that required by an individual with mental retardation (5<sup>th</sup> category)?

## FACTUAL FINDINGS

1. Claimant turns 21 years of age in December of 2011.
2. Claimant applied for agency services sometime before March 22, 2011. On March 22, 2011, after reviewing claimant's medical records, the agency notified claimant that his request for services was denied because, "it appears that [claimant] clearly is not eligible for IRC services . . . [He] does not currently have a substantial handicap due to a diagnosis of cerebral palsy, epilepsy, autism, or mental retardation." (Exh. 1)
3. On March 30, 2011, claimant signed and then submitted a Fair Hearing Request with the agency appealing the agency's denial of his request for services. The Fair Hearing Request indicated that claimant believed he was eligible for agency services based on a diagnosis of "Autism." (Exh. 2)
4. On June 30, 2011, the hearing on claimant's appeal commenced. On that date, the hearing was focused on whether claimant qualified for agency services based on a diagnosis of "Autism."
5. Claimant's belief that he qualified for agency services based on a diagnosis of "Autism" was predicated mainly on an April 8, 2011, psychological evaluation conducted by Dr. Kurt R. Bickford, a licensed Clinical & Neuropsychologist, who is credentialed by the State of California as an Educational Psychologist.
6. On April 8, 2011, Dr. Bickford met with claimant and his mother. Dr. Bickford obtained "Background Information," mainly from claimant, noted certain "Behavioral Observations," and used the following assessment instruments to assess claimant: Neurobehavioral Mental Status Exam; Wechsler Abbreviated Scales of Intelligence (WASI); Woodcock-Johnson Tests of Achievement-Revised (WJ); Trial Making Test A&B; and the Developmental Test of Visual-Motor Integration (VMI). Dr. Bickford did not administer any tests specific to assessing Autistic Disorder; rather, his diagnostic impressions concerning claimant were based on his review of claimant's history in addition to his clinical observations of claimant during the evaluation process. Based on this limited information, Dr. Bickford concluded that claimant had the following DSM-IV diagnoses: Axis I: 299.00 Autistic Disorder; 300.2 Generalized Anxiety Disorder, moderate; and Axis II: V62.89 Borderline Intellectual Functioning (IQ=71-84). (Exh. A<sup>1</sup>-10)
7. On August 15 and September 8, 2011, Dr. Sandra Brooks, Ph.D., Staff Psychologist for the agency, conducted assessments of claimant to determine whether he was eligible for agency services. Dr. Brooks interviewed claimant, and both his parents to obtain pertinent information. Dr. Brooks also reviewed numerous previous evaluations conducted by other professionals, including Dr. Bickford's report concerning his April 8, 2011, observations and evaluation of claimant. Additionally, Dr. Brooks used the following instruments to assess claimant: Wechsler Adult Intelligence Scale-Fourth Edition; Vineland Adaptive Behavior

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<sup>1</sup> "A" refers to the agency exhibits.

Scales-Second Edition; and the Autism Diagnostic Observation Schedule-Module 4 (ADOS). Dr. Brooks noted the reason(s) claimant was evaluated on two separate occasions in her report (Exh. A-9). According to Dr. Brooks, “The first session focused on ruling out Autistic Disorder. A second session was offered for further IQ testing since [claimant’s] most recent psychological evaluation contained only a brief measure of intelligence. [Claimant’s] mother also expressed that she would like [claimant] to be considered for eligibility under the 5<sup>th</sup> category.” (Exh. A-9)

As a result of a full assessment of claimant, including the use of the ADOS assessment instrument, Dr. Brooks concluded that claimant did not suffer from Autistic Disorder as defined by the DSM-IV. Instead he had the following diagnoses: Axis I: 314.01 ADHD; and 315.9 Learning Disorder. Dr. Brooks summarized claimant’s condition(s) as follows:

[Claimant] has an extensive psychiatric history and has received a number of psychiatric diagnoses in the past. [Claimant] has reportedly taken medication to address obsessive compulsive disorder, attention deficit hyperactivity disorder, and oppositional defiant disorder. [Claimant] was also diagnosed with post-traumatic stress disorder and schizophrenia secondary to being raped at age 9. Problem behaviors included severe attending [sic] problems, a lack of cooperation, disrespect for authority figures and difficulty relating to peers. [Claimant] also has a history of learning difficulties in the areas of reading, writing and mathematics. Subsequently, [claimant] received special education services under the category of learning disabled. With regards to his intellectual abilities [claimant] demonstrates a splintered pattern of test scores. Most notable is the significant discrepancy between [claimant’s] verbal and non-verbal abilities. [Claimant’s] verbal intelligence is in the mildly deficient to borderline range, while his non-verbal intelligence is in the average range. . . [Claimant] demonstrated strength in his ability to understand abstract social conventions, rules and expressions. Conversationally, [claimant] was able to express himself quite well and seemed able to understand the nuances of various social relationships. [Claimant] demonstrates a level of social awareness and sophistication that is inconsistent with Autistic Disorder or Mental Retardation. . . . [Claimant] demonstrates a number of skills that are beyond that which would be expected for someone [with] a substantially handicapping condition (e.g. [Claimant] has a driver’s license and has taken weekend trips to Las Vegas with his friends). . . . It is the examiner’s opinion that [claimant] is ineligible for Regional Center services under the criteria of mental retardation, a disabling condition closely related to mental retardation and/or that requires similar treatment, or autism as defined in Welfare and Institutions Code, Section 4512, and Title 17, California Code of Regulations, Section 54000.” (Exh. A-9)

8. As noted in Findings 3 and 4, the hearing was initially focused on the Autistic Disorder issue. As the hearing progressed it became apparent that further testing may prove beneficial in shedding some light on the issue of whether claimant qualified for services under the 5<sup>th</sup> category. Consequently, pursuant to a time-waiver and the agreement of the parties, the record remained open and the matter was continued for further evaluation(s).

9. The hearing reconvened on November 28, 2011. Claimant's parents arranged for claimant to undergo a neurometric evaluation conducted by Michael K. Linden, Ph.D., a licensed psychologist and the director of Attention Learning Centers. Claimant was assessed by Dr. Linden on October 15 and 22, 2011. Dr. Linden used the following testing instruments; IVA Continuous Performance Test (CPT); Q-EEG Map Evaluation; Wender Utah Adult Rating Scale (WURS); Adult Attention Deficit Disorder Behavior Rating Scales; Adult Aspergers Questionnaire (AQ); MMPI-2; Wechsler Adult Intelligence Scale, Third Edition (WAIS-III); and the Wechsler Individual Achievement Test, Second Edition (WIAT-II). As a result of his observations and testing, Dr. Linden arrived at the following diagnostic findings:

The results of the current neurometric and psychoeducational assessment indicate that [claimant] has severe ADHD; severe Learning Disabilities in Math and Oral Language; and a Cognitive Disorder with Borderline IQ. [Claimant] has significant, permanent disabilities. [Claimant] has been deemed unemployable by social security. He has difficulties taking care of himself (i.e. take his medication regularly) and living independently. His borderline intellectual abilities lead to confusion and misunderstandings. His poor social skills interfere not only with work environment, but also his relationships. The unlikely possibility of a Delusional Disorder should be ruled out in future assessments or if his daily functioning significantly deteriorates.

[Claimant's] significant disabilities meet 4 of the 5 categories (self-care, learning, receptive/expressive language, and self-direction) of the fifth category of developmental disabilities.” (Exh. C<sup>2</sup>-4.15)

Based on the foregoing diagnostic impressions Dr. Linden made the following recommendations:

1. [Claimant] should be referred to the Inland Regional Center to obtain a job coach for an extended period of time to assist him in the ability to become employable on a long time basis.
2. [Claimant] would benefit from a medication evaluation for his ADHD, a daily medication (i.e. Adderall) may decrease his ADHD symptoms while not requiring consistent compliance.

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<sup>2</sup> “C” refers to claimant's exhibits.

3. Psychoeducational remediation for his learning disabilities in Math and Oral Language.

4. [Claimant] may benefit from a course of QEEG Guided Neurofeedback for his ADHD, learning disabilities and cognitive disorder. (Exh. C-4.15)

10. Dr. Linden testified telephonically during the hearing. He explained that claimant does not have DSM-IV-TR diagnoses of mental retardation and/or autistic disorder; however, claimant's overall conditions [severe ADHD, language difficulties, severe learning disability and low I.Q. (ranging from 74 to 78)], in combination, result in claimant having significant functional limitations in three or more of the areas of major life activity, as listed in the definition of "Substantial Disability" set forth in California Code of Regulations, title 17, section 54001. Dr. Linden candidly acknowledged that claimant's "substantial disability" was not the result of claimant's low I.Q., alone.

11. Dr. Brooks did not dispute the fact that claimant suffers from a "substantial disability;" rather, Dr. Brooks testified that claimant does not have a "developmental disability" as defined by California Code of Regulations, title 17, section 54000. According to Dr. Brooks, claimant's "substantial disability" arises from psychiatric conditions, behavioral problems and learning disabilities, and not from a disabling condition closely related to mental retardation or which requires treatment similar to that required for individuals with mental retardation. Dr. Brooks is correct. Dr. Linden recommended treatments that are very dissimilar to those required for individuals with mental retardation (to wit: a medication evaluation for his ADHD, a daily medication (i.e. Adderall), Psychoeducational remediation for his learning disabilities in Math and Oral Language, and a course of QEEG Guided Neurofeedback for his ADHD, learning disabilities and cognitive disorder.)

## LEGAL CONCLUSIONS

1. California Welfare and Institutions Code section 4512 defines a "Developmental Disability" as a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely. . ." California Code of Regulations, title 17, section 54000 further defines "Developmental Disability" as follows:

"(a) 'Developmental Disability' means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

"(b) The Developmental Disability shall

"(1) Originate before age eighteen . . .

“(c) Developmental Disability shall not include handicapping conditions that are:

“(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

“(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

“(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.”

2. The facts, considered as a whole, reveal that claimant does not have a qualifying “Developmental Disability.” Except for Dr. Bickford<sup>3</sup>, all of the other experts who assessed claimant agree that claimant does not have autistic disorder. Claimant presents with a complex of multi-caused conditions; none of which, standing alone, is closely related to mental retardation or require(s) the same treatment as required for mental retardation. It is acknowledged that cumulatively, respondent’s conditions result in overall “substantial disability” and that claimant could benefit from some of the same services as one suffering from mental retardation, such as a job coach, however, California Code of Regulations, title 17, section 54000 requires more to establish a qualifying “Developmental Disability.” The burden rests on claimant to establish that he suffers from a qualifying “Developmental Disability” and, in this case, claimant failed to establish his eligibility by a preponderance of the evidence. (See Evid. Code, § 115.)

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<sup>3</sup> Dr. Bickford did not testify during the hearing so there was no opportunity to gain any clarification of his diagnoses. It is noteworthy that Dr. Bickford is the only professional to mention autistic disorder; however, as noted earlier in this decision, Dr. Bickford did not utilize a commonly recognized testing/assessment instrument, such as the ADOS, to assess claimant. Consequently, his autistic disorder diagnosis is suspect.

ORDER

The agency's conclusion that claimant is not eligible for agency services is upheld.

DATED: December 5, 2011.

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

**NOTICE:**

**This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**